

JESSICA RODRIGUEZ, LA'QUISHA  
HARRIS and ASHLEY WHITE,

Electronically Filed

Defendant

6. Admitted in part; denied in part. It is admitted that defendant terminated the employment of its employees on February 28, 2015. The remaining averments are denied as conclusions of law to which no response is required. To the extent the remaining averments are deemed to be factual, they are denied.

7. Denied.

8. Denied. While plaintiffs purport to bring a class-based claim, it is denied that they are entitled to any relief.

9. Denied as a conclusion of law to which no response is required.

10. Denied as a conclusion of law to which no response is required. It is specifically denied that defendant violated the WARN Act.

11. Denied.

12. Denied.

13. Denied. While plaintiffs purport to bring a class-based claim, it is denied that they are entitled to any relief.

14. Denied as a conclusion of law to which no response is required.

15. Denied as a conclusion of law to which no response is required.

16. Denied as a conclusion of law to which no response is required.

17. Denied as a conclusion of law to which no response is required.

18. Denied as a conclusion of law to which no response is required.

19. Denied as a conclusion of law to which no response is required.

20. Denied as a conclusion of law to which no response is required.

21. Admitted.

22. Denied as a conclusion of law to which no response is required.

23. Denied as a conclusion of law to which no response is required.
24. Denied as a conclusion of law to which no response is required.
25. Denied as a conclusion of law to which no response is required.
26. Denied as a conclusion of law to which no response is required.
27. Denied as a conclusion of law to which no response is required.
28. Denied.
29. Denied.

WHEREFORE, Defendant Infinite Care, Inc. respectfully requests that judgment be entered in its favor and that it be awarded reasonable costs and disbursement incurred in defending this action, attorneys' fees pursuant to 29 U.S.C. § 2104(a)(6) and for such other and further relief as the Court deems just and proper.

#### **First Affirmative Defense**

Plaintiffs' claims and putative Class Members' claims are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

#### **Second Affirmative Defense**

Infinite Care, Inc. did provide notice to plaintiffs and putative Class Members' under the WARN Act.

#### **Third Affirmative Defense**

Plaintiffs' claims and putative Class Members' claims are barred in whole or in part on the grounds that the closure of Infinite Care, Inc.'s business was caused by business circumstances that were not reasonably foreseeable at the time that any notice under the WARN Act would have been required.

#### **Fourth Affirmative Defense**

At all times pertinent hereto, Infinite Care, Inc. acted in good faith.

#### **Fifth Affirmative Defense**

Plaintiffs' damages and putative Class Members' claims, if any, are limited to salary or wages and benefits for working days during the relevant 60 calendar day period during which they were not paid under the WARN Act.

#### **Sixth Affirmative Defense**

Plaintiff's and putative Class Members' claims are barred by the unforeseeable business circumstances defense as set forth in 29 U.S.C. § 2102(b)(2)(A).

#### **Seventh Affirmative Defense**

Plaintiffs and putative Class Members' claims are barred, in whole or in part, because they failed to mitigate their damages, and their failure to mitigate damages should proportionately reduce their recovery and the allocation of fault, if any, attributable to Defendant.

#### **Eighth Affirmative Defense**

If any plaintiff is found to be entitled to recover pursuant to 29 U.S.C. § 2104(a)(1), then such recovery must be reduced, pursuant to 29 U.S.C. § 2104(a)(2), by wages paid to any plaintiff, any voluntary and unconditional payments to any plaintiff not required by legal obligation, or payments made to third parties on behalf of and attributable to any plaintiff.

#### **Ninth Affirmative Defense**

Infinite Care, Inc. avers all defenses available to it under the WARN Act.

### **Tenth Affirmative Defense**

Defendant reserves the right to further plead such defenses, affirmative defenses and counterclaims as may become necessary or appropriate following discovery in this case.

WHEREFORE, Defendant Infinite Care, Inc. respectfully requests that judgment be entered in its favor and that it be awarded reasonable costs and disbursement incurred in defending this action, attorneys' fees pursuant to 29 U.S.C. § 2104(a)(6) and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Steven K. Ludwig  
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Counsel for Defendant  
Infinite Care, Inc.

Dated: July 7, 2015

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served this day upon the following counsel of record via the Court's electronic transmission facilities:

Michael R. Miller, Esq.  
[mmiller@margolisedelstein.com](mailto:mmiller@margolisedelstein.com)

/s/ Steven K. Ludwig  
Steven K. Ludwig, Esquire

Dated: July 7, 2015